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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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In re KAYLAH C., a Person Coming  
Under the Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

ROSE K.,

Defendant and Appellant.

C050831

(Super. Ct. No. JD221628)

At a six-month review hearing held on August 31, 2005, the juvenile court denied the request of Rose K. (appellant), the mother of Kaylah (the minor), to terminate jurisdiction over the minor or, in the alternative, to place the minor in appellant's

care.<sup>1</sup> Appellant appeals from the orders of the juvenile court at the six-month hearing. We will reverse.

#### FACTS AND PROCEDURAL HISTORY

Appellant previously appealed from the jurisdictional order, challenging the sufficiency of the dependency petition, and the sufficiency of the evidence to support the jurisdictional and dispositional orders. (See *In re Kaylah C.* (Feb. 14, 2006, C050040) [nonpub. opn.] at pp. 1-2 (*Kaylah I.*)). Appellant also argued that the Sacramento County Department of Health and Human Services (DHHS) failed to comply with the notice provisions of the Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. section 1901 et seq. (*Id.* at p. 2.) This court rejected appellant's challenge to the adequacy of the petition and to the sufficiency of evidence to support the jurisdictional and dispositional orders. However, we conditionally reversed the orders and remanded the matter for compliance with ICWA's notice requirements. (*Id.* at p. 26.)

We dispense with a recitation of the underlying facts, as they are unnecessary to the disposition of the appeal. Our review of the record from the dispositional hearing to the six-month review hearing has not disclosed any attempt by DHHS to comply with ICWA requirements.

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<sup>1</sup> The record spells the minor's name in two ways: Kayla and Kaylah. We will refer to the minor as "Kaylah" throughout the opinion.

Appellant's present appeal raises the same issues that she raised in her appeal from the dispositional order. She merely incorporates, by reference, her arguments in the prior appeal. The only new point she raises is her contention that DHHS's failure to give adequate notice under ICWA is a continuing error.

At a six-month hearing, the juvenile court determines whether returning the minor to the parents would constitute a substantial risk to the minor, and may order whatever additional services the court deems necessary for reunification. (Welf. & Inst. Code, § 366.21.) Attacks on the sufficiency of the petition or the jurisdictional and dispositional findings raise issues not present at the six-month review hearing. These challenges to the dispositional order must be raised in an appeal from that order. "An appeal from the most recent order entered in a dependency matter may not challenge prior orders, for which the statutory time for filing an appeal has passed." (*In re Elizabeth M.* (1991) 232 Cal.App.3d 553, 563.)

Appellant's challenges to the sufficiency of the petition and the evidentiary support for the orders at the dispositional hearing cannot be raised in this appeal because these issues were not before the juvenile court at the six-month hearing. Accordingly, these claims are dismissed as not cognizable on appeal.

Since failure to comply with the notice provisions of ICWA is a continuing error (*Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 261), and the record does not demonstrate

that the error has yet been corrected, we issue the conditional reversal that we issued in *Kaylah I*. (See *Kaylah I*, *supra*, at pp. 26-27.)

#### **DISPOSITION**

The August 31, 2005, orders of the juvenile court at the six-month review hearing are reversed, and the matter is remanded to the juvenile court for the purpose of compliance with the notice provisions of ICWA and a determination whether ICWA applies in this case. The juvenile court is directed to order respondent, the Sacramento County Department of Health and Human Services, to provide proper notice of the proceedings to the Blackfeet tribe in accordance with the provisions of ICWA. Thereafter, if it is determined that the minor is an Indian child within the meaning of ICWA, the juvenile court must hold a further jurisdictional/dispositional hearing applying the requirements of ICWA. If there is no response or if the Blackfeet tribe determines the minor is not an Indian child, then the August 31, 2005, orders shall be reinstated.

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DAVIS, J.

We concur:

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SCOTLAND, P.J.

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SIMS, J.